IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 702 of 1995
In
SPECIAL CIVIL APPLICATION No. 13440 of 1993
with
CIVIL APPLICATION No. 425 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESH ATMARAM PRAJAPATI - Appellant(s)

Versus

SHITALNATH TEXTILE & 1 - Respondent(s)

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Appearance :
MR TR MISHRA for Appellant(s) : 1,
SERVED BY AFFIX.-(R) for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 08/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

1. Though served, no one appeared for respondents.

2. The appellant-original respondent - workman has challenged in this appeal the judgment and order dated 5.10.1994 passed by the learned Single Judge of this court (H.L.Gokhale, J.) in Special Civil Application No.13440/93 whereby the learned Single Judge allowed the writ petition filed by the respondent-original petitioner and quashed and set aside the order dated 28.6.1992 passed by the Authority under the Payment of Wages Act of directing payment of Rs.56,840/- to the present appellant from the original petitioner.

3. Mr.Mishra, learned counsel for the appellant vehemently submitted that when there was an alternative statutory remedy of appeal available to the present respondent-original petitioner, against the order passed by the Authority, then the learned Single Judge should have refused to exercise its writ jurisdiction under Articles 226/227 of the Constitution. He submitted that though this specific contention was raised by him before the learned Single Judge, but the said contention was simply brushed aside by the learned Single Judge by observing that “there is a gross error and it will not be improper if this court interferes and quashes and sets aside this order”. He submitted that there was no error much less gross error on the

part of the Authority in passing the order dated 20.6.1992 in favour of the present appellant. The said order was passed strictly in accordance with law, therefore, on merits also it was not open to the learned Single Judge to interfere with the order passed by the Authority. There is lot of substance in this submission raised by Mr.Mishra, learned counsel for the appellant. When there is a statutory alternative remedy of appeal, then ordinarily this court would not interfere, as held by Hon'ble Supreme Court of India in its number of decisions. From the order passed by the Authority in favour of the appellant, we find that no error much less gross error was committed by the Authority while passing the order dated 20.6.1992. From the judgment of the learned Single Judge allowing the writ petition, it is clear that he has tried to appreciate facts, as if he was sitting in appeal, which was not permissible while deciding the petition in his writ jurisdiction under Article 226 of the Constitution of India. When there was a statutory alternative remedy of appeal available to the respondent-original petitioner, then the learned Single Judge should have relegated the respondent to avail that remedy first.

4. In view of the above discussion, this appeal is required to be allowed. Accordingly, it is allowed and

the judgment and order dated October 5, 1994 passed by the learned Single Judge in Special Civil Application No.13440/93 against the order dated 20.6.1992 passed by the Authority under the Payment of Wages Act in favour of the present appellant is hereby quashed and set aside. The writ petition filed by the respondent-original petitioner is hereby dismissed and the order dated 20.6.1992 passed by the Authority under the Payment of Wages Act in favour of the present appellant is restored. However, there shall be no order as to costs.

5. Civil Application No.425 of 1997 would not survive as the main appeal itself is allowed. Accordingly, it is disposed of. Amount of Rs.10,000/- deposited by the respondent before this court be paid to the present appellant forthwith by way of account payee cheque in his favour.

(B.J.SHETHNA, J.)

(M.C.PATEL, J.)

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